

STATE OF MICHIGAN
COURT OF APPEALS

VICKI REISTERER,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED

September 23, 1997

No. 195941

Van Buren Circuit Court

LC No. 95-040986-NI

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this action where plaintiff seeks first-party no-fault personal injury protection benefits. This case is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand.

Although there was never any contact between plaintiff's horse drawn conveyance and the "phantom" motor vehicle to which plaintiff refers, if plaintiff can sustain the burden of proof that the phantom car existed and proximately caused her injuries by the manner in which it was operated, she has presented a claim upon which relief can be granted and summary disposition was improper. *Bromley v Citizens Ins Co*, 113 Mich App 131, 135; 317 NW2d 318 (1982). Whether (1) the distance between plaintiff's conveyance and the automobile when plaintiff began her evasive maneuvers was so great as to undercut her claim of proximate cause, i.e., at 35 miles-per-hour, plaintiff had less than 7 seconds before the automobile would have been upon her, (2) plaintiff's injuries were proximately caused by her perceived need for evasive action and the foreseeable consequences of taking the carriage off the road, or (3) the horse bolting was insufficiently related to the approach of the motor vehicle, these are likewise issues of proximate causation to be resolved by a trier of fact. *Greater Flint HMO v Allstate Ins Co*, 172 Mich App 783; 432 NW2d 439 (1988). Plaintiff's claim is not so clearly unenforceable as a matter of law that no factual development can possibly justify a right of recovery. *Bromley, supra*, 113 Mich App at 134, citing *O'Toole v Fortino*, 97 Mich App 797; 295 NW2d 867 (1980).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski